

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

JIMMIE PICKLESIMER

Plaintiff,

v.

**OHIO DEPARTMENT OF CORRECTIONS
AND REHABILITATION, et al.,**

Defendants.

Case No. 2:13-cv-728

JUDGE GREGORY L. FROST

Magistrate Judge Elizabeth P. Deavers

ORDER

This matter is before the Court for consideration of the Magistrate Judge's August 30, 2013 Initial Screen Report and Recommendation. (ECF No. 8.) In that filing, the Magistrate Judge conducted an initial screen of Plaintiff's Complaint as required by 28 U.S.C. §§ 1915(e)(2) and 1915A and recommended that the Court dismiss this action for failure to assert any claim with an arguable basis in law over which this Court has subject matter jurisdiction. The Magistrate Judge explained that "Plaintiff has failed to sufficiently plead a claim arising under the federal laws or the Constitution. Further, the Court lacks diversity jurisdiction to adjudicate any of his state-law claims." (ECF No. 8, at Page ID # 65.)

The Initial Screen Report and Recommendation also advised Plaintiff that a failure to object within fourteen days would "result in a waiver of the right to *de novo* review by the District Judge and waiver of the right to appeal the judgment of the District Court." (*Id.* at Page ID # 65-66.) Plaintiff never filed objections, but Plaintiff has filed an amended complaint. (ECF No. 11.) The filing of the amended complaint fails to preclude the dismissal of this action.

Moniz v. Hines, 92 F. App'x 208, 211-12 (6th Cir. 2004).

The Court has reviewed the Initial Screen Report and Recommendation. Noting that no objections have been filed and that the time for filing such objections has expired, the Court **ADOPTS** the Initial Report and Recommendation and **DISMISSES** Plaintiff's case pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) and Federal Rule of Civil Procedure 12(h)(3) **WITHOUT PREJUDICE** to filing the state-law tort claims in state court. The Clerk shall enter judgment accordingly and terminate this case on the docket records of the United States District Court for the Southern District of Ohio, Eastern Division.

IT IS SO ORDERED.

/s/ Gregory L. Frost
GREGORY L. FROST
UNITED STATES DISTRICT JUDGE